

**REMARKS**

Claims 1-27 are pending in this application. By this Amendment, claims 1, 6, 7, 18, 20-27 are amended. The amendments introduce no new matter because they are supported by at least the claims, and Applicants' disclosure at least at the paragraph beginning on page 3, line 13, as originally filed. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicants appreciate the courtesies shown to Applicants' representative by Examiner Colin during the October 6, 2005 personal interview, and the courtesies shown to Applicants' representative by Examiner Sheikh during the October 13 telephone interview. Applicants' separate record of the summary of the substance of the personal interview is briefly contained in the following remarks.

Applicants previously submitted a Request for Reconsideration After Final Rejection on October 20, 2005. In that Request for Reconsideration, Applicants indicated in a summary of the substance of the October 6 personal interview that clarification of the Office Action that Applicants sought, trying to address the issues raised in the Office Action, was not provided. Subsequent to the personal interview, Applicants representative had contacted Examiner Sheikh seeking to have the issues of the Office Action clarified. Examiner Sheikh indicated that he would have Examiner Colin forward appropriate clarification of the information provided in the Office Action by facsimile. That facsimile received on October 17, 2005 proved equally inadequate in responding to Applicants' request for clarification for reasons discussed below. Because that facsimile transmission was not made, of record, and there was no further documentation provided by the Patent Office, Applicants did not respond to the specific issues raised in that facsimile in the October 20 Request. In response to Applicants' Request, an Advisory Action was forwarded on December 21, 2005. The December 21 Advisory Action included an Interview Summary of the telephone interview held with Examiner Sheikh on

October 13, which Applicants representative had not previously received, and a copy of the October 17 facsimile transmission, now made of record. The Advisory Action, referencing these documents, seems to indicate that Applicants were under some duty to respond to the facsimile transmission. Because all of the comments are now made of record, the below remarks refer to the prior art rejections of the September 1 Office Action, and the clarification provided in the December 21 Advisory Action, including the October 17 facsimile.

The Office Action, in paragraph 3.1, rejects claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,117,096 to Bauer et al. (hereinafter "Bauer") in view of U.S. Patent Application Publication No. US 2002/0013898 to Sudia et al. (hereinafter "Sudia"). This rejection is respectfully traversed.

**I. Bauer Does Not Teach or Suggest All of the Features that the Office Action Alleges**

The Office Action indicates that Bauer is alleged to teach a distribution information management system as is recited, for example, in independent claim 1. This analysis fails for at least the following reasons.

The Office Action, with reference to col. 2, lines 10-24 of Bauer, appears to indicate that the control and monitoring unit connected to the goods to be distributed or to the transport container accompanying the goods through the distribution process is alleged to correspond to a data carrier attached to an article for storing the information of the article. The control and monitoring unit of Bauer "has a computer with data and program memories as well as a real-time clock, which is connected with an input/output unit 12" (col. 4, lines 49-53). As such, the control and monitoring unit of Bauer cannot reasonably be considered to correspond to a data carrier attached to an article that stores information relative to the article, the data carrier being an electronic tag, as is recited, among features, in the subject matter of the pending claims.

Information provided in the December 21 Advisory Action that was not provided in the Office Action alleges that Bauer teaches a first information verification unit, which the Office Action does not specifically address, but the clarification provided in the Advisory Action asserts corresponds to a "memory card (2)" of Bauer. The memory card is alleged to comprise a computer (32), alleged by the Advisory Action to correspond to the first verification part, and a first verification key storage part (33 and 34). It is difficult for Applicants to understand how a memory card can comprise a computer. For at least this reason, the attempted clarification of the issues, as requested by Applicants' representative and provided by the Examiner subsequent to the October 6 personal interview, did not provide necessary clarification of the subject matter in Bauer that is alleged to correspond to the features recited in the claims. In other words, a memory card cannot reasonably be considered to comprise a computer. And, the memory card 2 disclosed in Bauer does not comprise the computer 32 and any alleged components associated with that computer, *i.e.*, the alleged first verification key storage part (33 and 34).

The clarification provided subsequent to the October 6, personal interview quoted in the Advisory Action indicates that the quick look unit 51, and interface units 31, parts of the analysis unit 3, shown in Bauer correspond to at least a reading part that reads out information of a data carrier and a storing part that stores information in the data carrier. This is an inaccurate reading of what elements 31 and 51 can reasonably be considered to correspond to as well.

Claim 1 recites a system comprising a data carrier attached to an article that stores information relative to the article, the data carrier being an electronic tag; a distribution information processing module that reads information from and stores information to the data carrier; and a distribution information management module that the distribution information processing module communicates with by a first and second communications parts the distribution information management module managing information relative to the distribution

of the article. Bauer teaches a distribution and control system in which "a first unit, as the control and monitoring unit, is firmly connected to the goods to be distributed or with the transport container and accompanies the goods throughout the distribution process" (col. 2, lines 10-15). As indicated above, this control and monitoring unit cannot reasonably be considered to correspond to a data carrier attached to an article that is an electronic tag. Further, the clarification provided with the Advisory Action indicates that the other portions of the system disclosed in Bauer that are alleged to correspond to features recited in the claims are the analysis unit 3 alleged to correspond to a distribution information processing module and a distribution information management module 4 which is described in the disclosure of Bauer as "a program unit" (col. 4, lines 44 and 56).

The Office Action indicates that Bauer discloses a programmable card as well as an analysis unit for verifying all transactions during the distribution process and discloses each unit comprising computer and interfacing with the memory card and capable of interfacing with each other. While this may be correct, it is this programmable memory card that is the communications interface generally employed between at least the unit attached to the article and any alleged distribution information processing module (analysis unit 3) not the many other features that the memory card is alleged to correspond to. It is an unreasonable reading of Bauer for at least the reasons indicated above to assert that Bauer teaches the specific list of features that it is alleged to teach.

## **II. Sudia Does Not Teach or Suggest the Details of the Verification System**

The Office Action, on page 4, indicates that Bauer does not explicitly disclose a signature generating process that stores signature key information for generating a digital signature indicating that Sudia "in an analogous art" discloses a distribution verification system that is able to sign and verify the signature of the sender comprising first verification key storage

part that stores the verification key used by the information verification part for verification of the information. Applicants believe that the analysis of the Office Action fails for at least the following reasons.

The claims recite 27 individual elements which have not been adequately shown, even in the clarification provided with the Advisory Action to be disclosed, or even suggested, by the combination of Bauer and Sudia. Sudia is indicated as generally teaching certain security features in the recited claims. Even, however, the clarifying analysis provided with the Advisory Action does not show how Sudia suggests all of the combinations of separate units and/or devices as specifically recited in the claims. In this regard, paragraphs [0044], [0045], [0047], [0048], and particularly paragraphs [0050], [0054] and [0055] of Sudia are liberally indicated as generally suggesting a number of separate features as recited in the claims. Specifically, the Office Action and Advisory Action allege that Sudia teaches a signature module that performs signature generating process noting paragraph [0054]; and a signature key storage part that stores the signature key information used by the signature module for generating a digital signature, noting paragraphs [0054] and [0055]. Paragraphs [0054] and [0055] of Sudia relate to human operators acting at a work station as authorizing agents using a secure "smart card" 55. Attempting to equate smart cards, or even the programmable card discussed in Bauer, as any element involved in the distribution information processing, distribution information management and specifically information and/or signature key verification components recited in the claims is unreasonable. In fact, the attempt of the Office Action to equate either of the smart cards disclosed in the applied prior art references with a signature module that performs a signature generating process being detachable from the distribution information processing module and tamper proof is unreasonable (see claims 2 and 3). It is unclear to the Applicants how a smart card for verification processes can be alleged to correspond to a signature module that performs signature generating process.

### III. **Bauer and Sudia are not Combinable in the Manner Suggested by the Office Action**

Bauer teaches a system for the control and monitoring of the distribution of goods. The Office Action indicates that Bauer suggests some security with access codes. The Office Action goes on to concede that Bauer does not explicitly disclose a signature generating process that stores signature key information for generating a digital signature. Rather, the Office Action relies on Sudia as teaching such a feature.

MPEP §2143.03 instructs that "[t]o establish *prima facie* obviousness of a claimed invention, all the claimed limitations must be taught or suggested by the prior art. *In re Royka*, 409 F.2d 981, 180 USPQ 580 (CCPA 1974)." MPEP §2143.01 instructs that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP §2143.01 further instructs that "[a]lthough a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.'" *See also In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Applicant respectfully submits that the rejection of at least independent claim 1 is improper in view of at least MPEP §2143.01 because the Office Action lacks the required specific evidence of a teaching, suggestion or motivation in the prior art for one of ordinary skill to combine the references.

There is nothing in Bauer to suggest the multiple layers of security recited in the pending claims. As such, any attempt to combine the applied references improper on its face. The asserted motivation in the Office Action falls short of meeting the above-identified standard form, such motivation, as is required to make a *prima facie* showing of obviousness.

In response to Applicants' assertions regarding the combinability of the applied references and an argument that this conclusion of obviousness may only be reached through

improper hindsight reasoning based on Applicants' disclosure, the Advisory Action indicates that it must be recognized that any judgment of obviousness is "in a sense necessarily a reconstruction based upon hindsight reasoning." The Advisory Action asserts that so long as it takes into account only knowledge which was within this level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from Applicants' disclosure, such a reconstruction is proper. While this argument may, in fact, be true, as discussed above, it is necessary for the Examiner to indicate what motivation exists in the prior art to make the asserted combination. Applicants respectfully submit that it is unreasonable to view the entirety of specific features recited in Applicants' claims and to be able to assert that this specific combination of features was reasonably suggested to one of ordinary skill in the art by any permissible combination of Bauer and Sudia, without referencing the specific subject matter recited in the claims.

\* \* \* \* \*

In summary, Applicants believe that the analysis of the Office Action and the Advisory Action necessarily fails for at least the following reasons. First, there is no suggestion of a data carrier attached to an article that stores information relative to the article, the data carrier being an electronic tag in any combination of the applied prior art references. Second, even with the clarification provided in the facsimile transmission attached to the Advisory Action, the analysis of the features alleged to be shown by Bauer necessarily fails for, among other reasons, an indication that a memory card 2, alleged to correspond to the first information verification unit, comprises a computer. Third, Sudia teaches generally a verification methodology but its "smart card" cannot reasonably be read to correspond to the features alleged by the Office Action, *i.e.*, a signature module that performs a signature generating process. Fourth, any alleged motivation to combine the applied references, despite the assertions to the contrary in the Advisory Action and the attempt at rebuttal of Applicants'

arguments that is provided therein, falls short in meeting the standard of showing objective evidence where in the prior art some motivation to combine these references in the manner suggested by the Office Action is reasonably indicated.

For at least the above reasons, Applicants respectfully submit that the combination of the all of the features recited in independent claim 1 is neither taught, nor would it have been suggested, by any permissible combination of Bauer and Sudia. Further, independent claims 18 and 20-27 are also neither taught, nor would they have been suggested, by any permissible combination of the applied references for at least their inclusion of the same distinguishing features as are recited in independent claim 1. Finally, claims 2-17 and 19 are also neither taught, nor would they have been suggested, by any combination of the applied references for at least the respective dependence of these claims directly or indirectly on independent claims 1 and 18, as well as for the separately patentable subject matter that each of these claims recites.

For at least the above reasons, the combinations of all of the features varying recited in claims 1-27 cannot reasonably be considered to be taught, or to have been suggested, by any permissible combination of Bauer and Sudia. Accordingly, reconsideration and withdrawal of the rejection of claims 1-27 under 35 U.S.C. §103(a) as being unpatentable over any permissible combination of the applied references are respectfully requested.

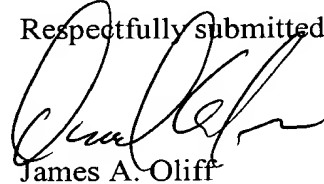
Applicants' representative previously presented many of the above arguments in the October 6 personal interview and the October 13 telephone interview. For the reasons set forth above, Applicants strongly traverse the various rebuttals of Applicants' representative's argument now made of record.

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-27 are earnestly solicited.



Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



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Attachments:

Request for Continued Examination  
Petition for Extension of Time

Date: February 1, 2006

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